

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 9
OFFERED BY MR. CONYERS OF MICHIGAN**

Page 80, insert after line 2 the following new sub-
section:

1 (i) EXTENSION OF FEE-SETTING AUTHORITY.—Sec-
2 tion 10(i)(2) of the Leahy-Smith America Invents Act
3 (Public Law 112–29; 125 Stat. 319; 35 U.S.C. 41 note)
4 is amended by striking “7-year” and inserting “17-year”.

Page 80, insert before line 3 the following new sec-
tion (redesignate the subsequent section and amend the
table of contents accordingly):

5 SEC. 10. PATENT AND TRADEMARK OFFICE FUNDING.

6 (a) DEFINITIONS.—In this section:

7 (1) DIRECTOR.—The term “Director” means
8 the Under Secretary of Commerce for Intellectual
9 Property and Director of the United States Patent
10 and Trademark Office.

11 (2) FUND.—The term “Fund” means the
12 United States Patent and Trademark Office Public
13 Enterprise Revolving fund established under sub-
14 section (c).

1 (3) OFFICE.—The term “Office” means the
2 United States Patent and Trademark Office.

3 (4) TRADEMARK ACT OF 1946.—The term
4 “Trademark Act of 1946” means the Act entitled
5 “An Act to provide for the registration and protec-
6 tion of trademarks used in commerce, to carry out
7 the provisions of certain international conventions,
8 and for other purposes”, approved July 5, 1946 (15
9 U.S.C. 1051 et seq.) (commonly referred to as the
10 “Trademark Act of 1946” or the “Lanham Act”).

11 (b) FUNDING.—

12 (1) IN GENERAL.—Section 42 of title 35,
13 United States Code, is amended—

14 (A) in subsection (b), by striking “Patent
15 and Trademark Office Appropriation Account”
16 and inserting “United States Patent and
17 Trademark Office Public Enterprise Fund”;
18 and

19 (B) in subsection (c)—

20 (i) in paragraph (1)—

21 (I) in the first sentence, by strik-
22 ing “To the extent” and all that fol-
23 lows through “fees” and inserting
24 “Fees”; and

1 (II) by striking “shall be col-
2 lected by and shall, subject to para-
3 graph (3), be available to the Direc-
4 tor” and inserting “shall be collected
5 by, and shall be available to, the Di-
6 rector until expended”; and
7 (ii) by striking paragraph (2) and re-
8 designating paragraph (3) as paragraph
9 (2).

10 (2) EFFECTIVE DATE.—The amendments made
11 by paragraph (1) shall take effect on the first day
12 of the first fiscal year that begins on or after the
13 date of the enactment of this Act.

14 (c) USPTO REVOLVING FUND.—

15 (1) ESTABLISHMENT.—There is established in
16 the Treasury of the United States a revolving fund
17 to be known as the “United States Patent and
18 Trademark Office Public Enterprise Fund”. Any
19 amounts in the Fund shall be available for use by
20 the Director without fiscal year limitation.

21 (2) DERIVATION OF RESOURCES.—

22 (A) IN GENERAL.—There shall be depos-
23 ited into the Fund on and after the effective
24 date set forth in subsection (b)(2)—

1 (i) any fees collected under title 35,
2 United States Code; and

3 (ii) any fees collected under the
4 Trademark Act of 1946 (15 U.S.C. 1051
5 et seq.).

6 (B) REMAINING BALANCES.—There shall
7 be deposited in the Fund, on the effective date
8 set forth in subsection (b)(2), any unobligated
9 balances remaining in the Patent and Trade-
10 mark Office Appropriation Account, and in the
11 Patent and Trademark Fee Reserve Fund es-
12 tablished under section 42(c)(2) of title 31,
13 United States Code, as in effect on the day be-
14 fore such effective date. Upon the payment of
15 all obligated amounts in the Patent and Trade-
16 mark Fee Reserve Fund, the Patent and Trade-
17 mark Fee Reserve Fund shall be terminated.

18 (3) EXPENSES.—Amounts deposited into the
19 Fund under paragraph (2) shall be available, with-
20 out fiscal year limitation, to cover—

21 (A) all expenses, to the extent consistent
22 with the limitation on the use of fees set forth
23 in section 42(c) of title 35, United States Code,
24 including all administrative and operating ex-
25 penses, determined in the discretion of the Di-

1 rector to be ordinary and reasonable, incurred
2 by the Director for the continued operation of
3 all services, programs, activities, and duties of
4 the Office relating to patents and trademarks,
5 as such services, programs, activities, and du-
6 ties are described under—

7 (i) title 35, United States Code; and

8 (ii) the Trademark Act of 1946; and

9 (B) all expenses incurred pursuant to any
10 obligation, representation, or other commitment
11 of the Office.

12 (d) ANNUAL REPORT AND OPERATION PLAN.—Not
13 later than 60 days after the end of each fiscal year, the
14 Director shall submit to Congress a report that—

15 (1) summarizes the operations of the Office for
16 the preceding fiscal year, including financial details
17 and staff levels broken down by each major activity
18 of the Office;

19 (2) describes the long term modernization plans
20 of the Office;

21 (3) sets forth details of any progress towards
22 such modernization plans made in the preceding fis-
23 cal year; and

24 (4) includes the results of the most recent audit
25 carried out under subsection (f).

1 (e) ANNUAL SPENDING PLAN.—

2 (1) IN GENERAL.—Not later than 30 days after
3 the beginning of each fiscal year, the Director shall
4 notify the Committee on Appropriations of the
5 House of Representatives and the Committee on Ap-
6 propriations of the Senate of the plan for the obliga-
7 tion and expenditure by the Office of the total
8 amount of the funds for that fiscal year in accord-
9 ance with section 605 of the Science, State, Justice,
10 Commerce, and Related Agencies Appropriations
11 Act, 2006 (Public Law 109–108; 119 Stat. 2334).

12 (2) CONTENTS.—Each plan under paragraph
13 (1) shall—

14 (A) summarize the operations of the Office
15 for the current fiscal year, including financial
16 details and staff levels with respect to major ac-
17 tivities; and

18 (B) detail the operating plan of the Office,
19 including specific expense and staff needs, for
20 the current fiscal year.

21 (f) AUDIT.—The Director shall, on an annual basis,
22 provide for an independent audit of the financial state-
23 ments of the Office. Such audit shall be conducted in ac-
24 cordance with generally accepted accounting principles.

1 (g) BUDGET.—The Director shall prepare and submit
2 each year to the President a business-type budget for the
3 Fund in such manner, and before such date, as the Presi-
4 dent prescribes by regulation.

